



**ASIC**  
Australian Securities &  
Investments Commission

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and Investments Commission**

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Phillip Sweeney

**By email:** [foi+request-6439-42573ead@righttoknow.org.au](mailto:foi+request-6439-42573ead@righttoknow.org.au)

Our Reference: FOI 110-2020

20 July 2020

Dear Mr Sweeney

**Freedom of Information Request No. 110-2020**

**Notice to Identify Documents under Section 24AB of the Act**

I refer to five (5) requests you sent to ASIC dated between 28 June 2020 and 30 June 2020, seeking access to documents under the *Freedom of Information Act 1982 (FOI Act)*.

On 10 July 2020 I sent you a notice under s 24AB of the FOI Act (the **Notice**) advising that:

- the 5 requests would be treated as a single request pursuant to s 24(2) of the FOI Act; and
- the requests, as combined, were subject to practical refusal ground on the basis that the request did not satisfy the requirement in paragraph 15(2)(b) (identification of documents).

In the Notice you were invited to submit a revised request addressing the practical refusal ground.

On 14 July 2020 ASIC received your revised request which is described in the attached schedule (the **Request**).

**Section 15(2)(b) of the FOI Act**

Upon further consideration and having conducted searches to identify documents falling within the Request, I have identified additional parts of the Request that are subject of a practical refusal ground on the basis of s 15(2)(b).

In your Request (at part 1), you refer to your complaint to ASIC dated 31 March 2009 (ASIC reference: 15476/09) and Mr Greg Hackett's response dated 22 April 2009 to this complaint. The Request seeks access to "a copy of the letter dated around mid-2010 in which Warren Day reported on the "investigation" into his own "Straw Man" complaint." My searches have failed to identify any document(s) that matches your description of "Straw man" or any document dated "mid-2010" in relation your complaint dated 31 March 2009. However, I have identified a document dated 2 July 2010 from Mr Warren Day addressed to you responding to your letter dated 25 April

2020 addressed to former ASIC Chair Tony D'Aloisio (ASIC reference: CCU-10\0195). Please advise if this is the document you seek in the Request.

In your Request (at part 2), you refer to a request for information by Senator John Williams to ASIC dated 6 January 2014 and characterise ASIC's response to that request as "false and misleading information provided to Senator Williams". The Request seeks "a copy of the response sent by Ms Tenaski to former Senator John Williams sometime after 6 January 2014". Whilst I am unable to identify any document(s) which may be "false and misleading" my searches have identified a document dated 17 January 2014 from Ms Belinda Taneski addressed to Senator John Williams responding to his request dated 6 January 2014 (ASIC reference CCU-14\0006). Please advise if this is the document you seek in the Request..

In your Request (at part 4), you refer to a request for information by Senator John Williams to ASIC dated 28 January 2014 and characterise ASIC's response as "false and misleading information provided to Senator Williams". In discussing this document, you note that:

*"Therefore, Mr Fitzpatrick provided former Senator Williams with false and misleading information related to:*

- *The provisions of statutory law; namely the provisions of section 1017C of the Corporations Act 2001; and*
- *The provisions of the general law of trusts; namely how a trustee must interpret the original trust Deed and all VALID amending Deeds executed up until the time a 'release event' occurs when determining a benefit payment or payments."*

I am unable to identify any document(s) that matches your description. The request seeks "a copy of the response sent by Gerard Fitzpatrick to former Senator John Williams sometime after 28 January 2014 where no mention of subsection 1017C(5) was made". Whilst I am unable to identify any document(s) which may be "false and misleading", my searches have identified a document dated 11 February 2014 from Mr Gerard Fitzpatrick addressed to Senator John Williams responding to his request dated 28 January 2014 (ASIC reference CCU-14\0060). Please advise if this is the document you seek in your Request.

As the Request does not satisfy the requirement set out in section 15(2)(b) of the FOI Act which states that a request for access to a document must '*provide such information concerning the document as is reasonably necessary to enable a responsible officer of an agency... to identify it*' ASIC may, in accordance with section 24(1)(b) of the Act, refuse to process your application.

For the reasons stated above, the Request in its current form does not adequately identify the documents sought and it would therefore be my intention to refuse the Request given that a practical refusal reason exists within the meaning of section 24AA(1)(b) of the FOI Act.

### **Request consultation process**

The purpose of this letter is to provide you with an additional opportunity to revise the Request so that the practical refusal reason no longer exists before a final decision is made. Should you wish to submit a revised request please take into consideration the issues raised in this notice to ensure that they are addressed.

**Timeframe**

The statutory timeframe for notifying an applicant of a decision on a request for access under the FOI Act is 30 days from the day the agency receives the request. Please note that in accordance with section 24AB(8) of the FOI Act, the time for processing your request is suspended from the day that you receive this letter, and resumes on the day after ASIC receives from you one of the following:

- written notification that you wish to withdraw the request;
- a revised written request addressing the matters raised above; or
- written notification that you do not wish to revise your request.

If you choose to do one of the following actions above mentioned, you must do so **within 14 days** of the date of this letter (the **consultation period**). If I have not heard from you by the end of the consultation period, your request will be taken to be withdrawn in accordance with section 24AB(7) of the FOI Act.

Should you wish to provide written notification to withdraw the request this must also be done within the consultation period. A written notification of withdrawal is effective at the time of the withdrawal. Section 24AB(7) provides that a withdrawal is effective at the end of the consultation period if the applicant does not take any action.

During the consultation period you may wish to seek assistance in reframing your request. If you have any questions or wish to discuss, please contact me by email at [krystal.fung@asic.gov.au](mailto:krystal.fung@asic.gov.au)

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Krystal Fung', written in a cursive style.

**Krystal Fung**  
**(Authorised decision maker pursuant to subsection 23(1) of the FOI Act)**  
**For the Australian Securities and Investments Commission**

**Schedule of Phillip Sweeney requests 28 June 2020 to 30 June 2020**

<b>Request No.</b>	<b>Date of Request</b>	<b>Documents sought in Request</b>
<b>1.</b>	<b>28 June 2020</b>	" ...The document I seek is a copy of the letter dated around mid-2010 in which Warren Day reported on the "investigation" into his own "Straw Man" complaint."
<b>2.</b>	<b>29 June 2020</b>	"...The document I seek is a copy of the response sent by Ms Tenaski to former Senator John Williams sometime after 6 January 2014."
<b>3.</b>	<b>29 June 2020</b>	<p>" ...The first document I seek is a copy of the response sent by Warren Day to former Senator John Williams sometime after 18 July 2013.</p> <p>I am also seeking a copy of the original Trust Deed made on the 23 December 1913 in the State of South Australia when the original sponsoring employer was Elder Smith &amp; Co Ltd that should have been obtained by Warren Day in 2013 or at a later date by ASIC."</p>
<b>4.</b>	<b>30 June 2020</b>	"...The document I seek is a copy of the response sent by Gerard Fitzpatrick to former Senator John Williams sometime after 28 January 2014 where no mention of subsection 1017C(5) was made."